IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 129 of 2004.

Judgement reserved on: 23.4.2007.

Date of decision: 1.5.2007.

Karam Chand **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the appellant: **Mr. Anand Sharma, Advocate.**

For respondent : **Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S.Nainta,Deputy Advocate General.**

Surjit Singh, Judge.

Appellant Karam Chand is aggrieved by the judgement dated 2.3.2004 of the Sessions Court, whereby he has been convicted of an offence, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- and in default of the payment of fine, to undergo simple imprisonment for a further period of two years. So, he has preferred this appeal seeking the reversal of the judgement.

Whether reporters of the local papers may be allowed to see the judgment?

2. Case of the prosecution, as per record is as follows. PW 12 Jatinder Kumar, SHO, Police Station, Dalhousie assisted by PW 11 ASI Amar Singh and some other police officials had organized a Nakka at a place called Zero Point near village Goli on 8.2.2002. Around 9.30 a.m., ASP-cum-SDPO, Dalhouse Sh. Gianeshwar Singh (PW 17) accompanied by some subordinate officials also reached there. In the meanwhile, a Maruti van registered as taxi, which was being driven by PW 2 Khushi Ram reached there. It was got stopped for checking. PW 1 Brij Mohan was sitting beside the driver. When the vehicle and the papers of the vehicle were being checked, two persons, one of whom was appellant Karam Chand, appeared from Chaura Dam side. Appellant was carrying a Pithu (haversack) on his back. On seeing the police, the appellant and his companion turned back and tried to run away. That aroused the suspicion of PW 17 ASP Gianeshwar Singh. He apprehended both of them with the help of the police officials present on the spot. Pithu carried by the appellant on his back was searched. It was found to contain another yellow coloured bag. This second bag was opened. It was found to contain charas. PW 4 Ashok Kumar was deputed to procure scale and weights from some nearby shop. He brought the same from the shop of PW 3 Mohan Singh. The charas weighed 15 Kilo 500 grams. Two samples were taken out. Samples and the bulk charas were made up into three separate parcels, which were sealed separately. All this happened in the presence of Brij Mohan PW 1 and Khushi Ram PW 2, whose Maruti van had been got stopped for checking purpose. Search and seizure memo Ex. PA was prepared, which was signed by these two witnesses, besides the police officials. One of the samples was later on sent to the Chemical Examiner, who reported its contents to be of charas.

3. Appellant and his companion were arrested and challaned in the court of Sessions Judge, who charged them with an offence, under Section 20 of the Act and on their pleading not guilty, put them on trial.

4. The appellant and his companion took the plea that on the relevant date they had gone to a water-mill situated at a short distance from the site of the alleged search with bags of maize to get the maize ground into flour, where police men were already present and some charas was also lying in a bag and that that charas was planted upon them.

5. On the conclusion of the trial, the court found the appellant guilty of the offence, under Section 20 of the Act and convicted and sentenced him, as aforesaid. His accomplice was, however, acquitted.

6. Learned counsel representing the appellant submitted that the evidence on record probalises the defence plea and renders the prosecution version highly doubtful. He submitted that both the so called independent witnesses, i.e. PW 1 Brij Mohan and PW 2 Khushi Ram turned hostile and did not corroborate the prosecution version. He also submitted that neither of the two witnesses could be said to be an independent witness, because one of them, namely PW 2 Khushi Ram, per his own statement is a stock witness of the police and both of them are the employees of a wine contractor, who always remains under the influence of the police. His further submission is that the testimony of the police officials, namely PW 11 Amar Singh, PW 12 Jatinder Singh and PW 17 Gianeshwar Singh regarding the alleged apprehension of the appellant and his accomplice, the search of their person/ belongings and the recovery of charas does not inspire confidence on account of some inherent defects and also because of its having not been corroborated by any independent witness.

7. We have considered the submissions of the learned counsel for the appellant in the light of the evidence on record, which we have thoroughly gone through. PW 1 Brij Mohan and PW 2 Khushi Ram have stated that on the relevant date i.e. 8.2.2002, they were taken from Banikhet to a water-mill located at about 2 K.M. beyond village Pandtah, where charas was lying in a bag and that in the meanwhile the appellant and his accomplice came and the police people asked them if the charas belonged to them, which fact they denied. The two witnesses are contradicted by their previous statement, under Section 161 of the Code of Criminal Procedure, as also their signatures on the search and seizure memo Ex. PA with which they were duly confronted. In addition to the aforesaid facts, the two witnesses stated that charas was weighed at Police Post, Banikhet. This part of their deposition is proved to be false not only by the testimony of the police officials, but also an independent witness, namely PW 3 Mohan Singh, who stated that scale and weights were taken from his shop by a police official. The testimony of this witness remains unchallenged as was not subjected to cross-examination. PW 4 Constable Ashok Kumar also stated that he had procured the scale and the weights from PW 3 Mohan Singh, shopkeeper of village Golian. Now when the scale and the weights had been procured from the shop of Mohan Singh (PW 3) at village Golian, which is at a distance of about 17 K.M. from Banikhet, it can legitimately be presumed that the recovered stuff was weighed at the site of the alleged recovery and not at Banikhet, as testified by PW 1 Brij Mohan and PW 2 Khushi Ram. These facts leave no doubt that the two witnesses have suppressed the true version for the reasons best known to them.

8. Evidence of the official witnesses, namely PW 17 Gianeshwer Singh and PW 11 Amar Singh about the manner in which

the appellant and his accomplice were apprehended and also about the search of the Pithu which the appellant was carrying on his back and the recovery of charas therefrom does not suffer from any infirmity or inconsistency or discrepancy or any contradiction worth noticing. Rather the testimony that the stuff was recovered and weighed on the spot is corroborated by the testimony of PW 3 Mohan Singh and PW 4 Ashok Kumar. Mohan Singh (PW 3) has stated that scale and weights were taken away from his shop by a police official. PW 4 Ashok Kumar says that he had procured the scale and weights from the shop of PW 3 Mohan Singh for the purpose of weighing the recovered stuff.

9. It was submitted by the learned counsel representing the appellant that though the search and the seizure were claimed to have taken place around 9.30 a.m. and the entire proceedings completed within three hours, the case property was deposited with the S.H.O., Police Station, Dalhousie at 7.30 p.m., despite the fact that the distance between the place of alleged search and seizure and the Police Station is 22-25 kilometers and the two places are connected by motorable road. It is true that the evidence on record substantiates the contention of the learned counsel, but this circumstance by itself does not in any way affect the aforesaid testimony of PW 11 Amar Singh and PW 17 Gianeshwar Singh regarding search and seizure of charas from the appellant, nor did the learned counsel urge that the fact in any way affects the credibility of the prosecution version.

10. Another submission made by the learned counsel was that though the police party claimed to have left the Police Station on the previous evening by police gypsy, it returned by bus on the next evening, as per depositions of PW 11 Amar Singh and PW 12 Jatinder Singh. This submission is also borne out from the evidence on record. But this fact also in no way makes the prosecution version doubtful. Moreover,

the witnesses of the prosecution, particularly the police officials, were not cross-examined by defence with regard to this aspect of the matter. May be that if questioned, they would have offered some reasonable explanation.

11. In view of the above stated position, we see no reason to interfere with the findings of the trial court that the appellant is guilty of the offence of possessing charas, which is punishable, under Section 20 of the Act. We also see no reason for interfering with the sentence part of the judgement, i.e. the sentence of substantive imprisonment and the fine, because the quantity of charas recovered from the appellant was commercial and the trial court has imposed the minimum sentence prescribed for the offence of possessing commercial quantity of charas. However, we do feel that the sentence of two years imprisonment awarded by the trial court in case of non-payment of fine, is excessive and even oppressive. We reduce it to simple imprisonment for six months. With this modification in the judgement of the trial court, the appeal is dismissed.

(Surjit Singh),
Judge.

May 1, 2007.
(Hem)

(Sanjay Karol),
Judge.